

IRS Can Fix Tax Trap for Unwary With Timely Qualified Appraisal

Nov. 9, 2023, 1:30 AM PST

Falcon Rappaport & Berkman's Matthew Rappaport, Andrew Gradman, and Sam Brady identify a tax trap that can affect taxpayers who need a qualified appraisal to claim a deduction under Section 170 of the tax code.

For taxpayers who donate property worth more than \$5,000 and miss their return filing deadline, the IRS will reject a qualified appraisal as untimely if the donor simply reports the donation on a late return. However, it will accept the appraisal if the donor omits the donation from the late return, then describes it on an amended return.

Planners should be alert to this potential trap, and the IRS should amend its regulations to accommodate appraisals attached to late-filed returns.

Reg. 1.170A-17(a)(8), finalized in 2018, offers two paths to a qualified appraisal being treated as timely received by the donor. For the first path, the appraisal could be received by the return's due date. For example, if an individual makes a charitable contribution on Jan. 1, 2024, and pays tax due on April 15, 2025, this due date would be roughly April 15, 2025 (or Oct. 15, 2025, if they took an extension).

For the second path, the appraisal could be received by the return's filing date if the deduction is first claimed on an amended return. Although there's no official deadline for amending returns, a claim for credit or refund of an overpayment of tax must be filed within two years of paying the tax—or, where the taxpayer filed an earlier return, within three years of that filing, if later. (See Section 6511 of the tax code.)

If our hypothetical individual overpays and doesn't file a return, that person must obtain the qualified appraisal by April 15, 2027—the deadline to seek a refund. If the individual did file a return—say, by the Oct. 15, 2025, deadline—then they have until Oct. 15, 2028, to obtain the qualified appraisal.

And if the person pays the correct amount of tax from the start, they could file the qualified appraisal at any time, subject to the IRS's discretion to accept his amended return, as shown in *Dover Corp & Subsidiaries v. Commissioner*.

This second path only becomes available if the deduction is first claimed on an amended return. This means the taxpayer must first file a return omitting the deduction, then must amend. Had the taxpayer instead filed an untimely return claiming the deduction, this second path would be unavailable.

This process is convoluted and probably unnecessary, but when we reached out to an IRS attorney at the chief counsel's office to discuss, that attorney informally expressed the view that this is the IRS's reading of the rule.

The process also raises several questions. First, why have a deadline for receipt of qualified appraisals at all? Usually, deadlines of this kind are meant to ensure that documents are prepared while facts are fresh. But under this plan, certain taxpayers effectively have unlimited time to receive their appraisals. Why the inconsistency?

Second, why did the Treasury department include the two different paths to timeliness? Why include a deadline based on the due date when there's a far more generous deadline based on filing date?

Finally, why did Treasury limit the second path to taxpayers for whom the contribution was "first claimed, or reported, on an amended return"? We're aware of no other rule that would penalize a taxpayer for taking a particular position on a return but would reward the taxpayer for omitting it and then immediately amending to include that position.

These three questions suggest that Treasury should re-evaluate whether this rule achieves its goals. The regulation should be amended to strike the word "first" from Regs. 1.170A-17(a)(4)(iii) and 1.170A-17(a)(8).

The relevant portion of 1.170A-17(a)(8) would then read, "The qualified appraisal must be received by the donor before the date, including extensions, of the return on which a deduction is claimed," with Reg. 1.170A-17(a)(4)(iii) functioning the same way. This would allow taxpayers to claim charitable deductions on their amended returns and remove the trap for the unwary regarding late-filed returns.

Until Treasury closes this trap, tax advisers must navigate with caution. Courts are highly sensitive to the formalities of charitable deductions requiring qualified appraisals, and they've required strict adherence to the deadlines for qualified appraisals. Reporting the deduction on a late return would bring disaster, but omitting the deduction and then amending to include it would, curiously, receive more favorable treatment.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Matthew Rappaport is the vice managing partner and chair of the tax group at Falcon Rappaport & Berkman.

Andrew Gradman is of counsel in the tax group at Falcon Rappaport & Berkman.

Sam Brady is a law clerk with the tax group at Falcon Rappaport & Berkman.

We'd love to hear your smart, original take: Write for us.

